

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company to issue, sell, and deliver one or more series of Debt Securities and to guarantee the obligations of others in respect of the issuance of Debt Securities, the total aggregate principal amount of such long-term indebtedness and guarantees not to exceed \$2 billion; to execute and deliver one or more indentures; to sell, lease, assign, mortgage, or otherwise dispose of or encumber utility property; to issue, sell and deliver in one or more series, an aggregate amount not to exceed \$200 million par or stated value of First Preferred Stock -- \$25 Par Value; to issue an aggregate \$2.0 billion of short-term debt obligations; to utilize various debt enhancement features; enter into interest rate hedges; and for an exemption from the Commission's Competitive Bidding Rule. (U 39 M)

Application 04-05-041
(Filed May 27, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING
DENYING MOTION TO FILE UNDER SEAL**

1. Summary

This ruling denies the motion filed by Pacific Gas and Electric Company (PG&E) to place under seal the following documents included in the supplement to Application 04-05-041 dated June 21, 2004¹:

- Schedule II: Statement of projected cash flows for the years 2004 through 2008.
- Schedule III: Statement of projected cash requirements for the years 2004 through 2008.
- Schedule IX-B: Statement of projected capitalization ratios for the years 2004 through 2008.

This ruling was made pursuant to Rule 45(h), which allows an Administrative Law Judge to rule on a motion before responses or replies are filed.

2. Requested Relief

PG&E asserts in its motion that Schedules II, III, and IX-B should be placed under seal for the following reason: “The supplemental financial information contains forward-looking statements that are necessarily subject to various risks and uncertainties and are subject to change. Since . . . the supplemental financial information . . . contains material, non-public information, [PG&E] seeks confidential treatment of . . . Schedules II, III, and IX-B....”

3. Discussion

The purpose of Pub. Util. Code § 583 and General Order (GO) 66-C is to provide public access to information concerning the conduct of the people’s business while counterbalancing the right to shield confidential information from public disclosure. In accordance with their purpose, Section 583 and GO 66-C

¹ PG&E filed redacted and unredacted copies of the supplement. The redacted copies were publicly disclosed. The unredacted copies were filed under seal.

permit the Commission to withhold records from the public when the facts of the particular case show that the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.

Perhaps one of the Commission's most detailed analyses of the balancing of the public interest in an open regulatory process with a utility's desire to shield information from disclosure was a case involving Pacific Bell. (*In re Pacific Bell* (1986) 20 CPUC 2d 232.) In that case, the Commission stated:

PacBell must understand that in balancing the public interest of having an open and credible regulatory process against its desires not to have data it deems proprietary disclosed, we give far more weight to having a fully open regulatory process. (20 CPUC 2d at 257.)

The standard applied by the Commission is a stringent one. The mere fact that a utility labels a statement or a document "proprietary" does not make it so. In the *Pacific Bell* case, the Commission stated:

Certainly there are times to be concerned about full disclosure of proprietary data. Classic examples are customer lists, true trade secrets, and prospective marketing strategies where there is full- blown – and not peripheral – competition. To make the assertion stick that there are valid reasons to take unusual procedural steps to keep data out of the public record (*e.g.*, sealed exhibits, clearing the hearing room or sealed transcripts), there must be a demonstration of imminent and direct harm of major consequence, not a showing that there may be harm or that the harm is speculative and incidental. (20 CPUC 2d at 252.)

PG&E's motion does not allege that PG&E will be harmed by the public disclosure of the information that it seeks to place under seal. This is reason enough to deny the motion under the standard articulated in *Pacific Bell*. But more importantly, there appears to be a substantial public interest in the public disclosure of the information. In particular, the Commission has routinely relied

upon and publicly disclosed similar information in dozens of decisions addressing applications similar to PG&E's current application.² The Commission's practice demonstrates that the information PG&E seeks to place under seal should be publicly disclosed unless there is a showing that public disclosure will cause demonstrable, imminent, and substantial harm. PG&E has not made such a showing.

Therefore, **IT IS RULED** that:

1. The motion of Pacific Gas and Electric Company to place under seal certain documents included in the supplement dated June 21, 2004, is denied.
2. The unredacted copies of the supplement previously filed at the Commission shall no longer be maintained under seal after July 9, 2004.

Dated June 28, 2004, at San Francisco, California.

/s/ Timothy Kenney

Timothy Kenney
Administrative Law Judge

² See, for example, the following decisions that disclose information regarding utilities' projected cash requirements: Decision (D.) 04-04-051, D.03-12-004, D.03-11-018, D.02-12-067, D.02-09-019, D.02-04-054, and D.02-03-017.

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Denying Motion to File Under Seal on all parties of record in this proceeding or their attorneys of record.

Dated June 29, 2004, at San Francisco, California.

/s/ Antonina V. Swansen

Antonina V. Swansen

N O T I C E

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